

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) QUILL INK BOOKS LIMITED, a
foreign corporation, and
(2) ZOEY ELLIS, an individual,

Plaintiffs,

v.

(1) ABCD GRAPHICS AND DESIGN,
INC., D/B/A BLUSHING BOOKS
PUBLISHING, a foreign corporation,
(2) ADDISON CAIN, an individual, and
(3) JOHN and JANE DOE, unknown
individuals and online participants,

Defendants.

Case No.: CIV-18-920-G

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, Quill Ink Books Limited (“Quill”) and Zoey Ellis (“Ellis”) (collectively
“Plaintiffs”), allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this action against Defendants, ABCD Graphics and Design, Inc., (“ABCD”) d/b/a Blushing Books Publishing (“Blushing”), Addison Cain (“Cain”), and John and Jane Does (“Does”), seeking injunctive relief for malicious interference with contract and for copyright misuse; and for damages for misrepresentation of copyright claims under the Digital Millennium Copyright Act, tortious interference with prospective and existing business relationships, defamation, false light, negligence, civil conspiracy; and for declaratory relief.

BACKGROUND

2. The literary world, especially within the romance genre and its sub-genres, has experienced anti-competitive behavior by certain bad actors attempting to monopolize the industry through misuse of trademark and copyright law. Ranging from misuse of “take-down” notices to litigation over the use of a common word in a book title,¹ unlawful practices are becoming more and more prevalent.

3. This case is about protecting a promising new author from Defendant Blushing and Cain’s deliberate misuse of copyright law to inflict harm to Plaintiffs’ reputation and livelihood. Blushing and Cain’s efforts to destroy Plaintiffs include the publication of false claims of plagiarism against Ellis in online reader communities and the encouragement, solicitation, and coordination of negative reviews and comments anywhere Ellis’s works are published. Incredibly, one of Ellis’s books that Blushing and Cain attacked was not even in publication at the time their “take-down” notice. Blushing and Cain’s misconduct, including their “surround and strangle” tactic, is unlawful and should be enjoined. Further, Plaintiffs should be awarded all damages resulting from Blushing and Cain’s deceitful and malicious conduct.

¹ *In Hop Hop Productions, Inc., et al., v. Kevin Kneupper, et al.*, 18 CV 4670 (S.D. N.Y. 2018), Plaintiff, Faleena Hopkins, applied for a trademark for the use of the word “cocky” in romance titles and sued other authors who refused to retitle their works. Hopkins’s attempt to block the sale of those books by other romance writers ultimately failed.

4. Additionally, public policy mandates judgment against Blushing and Cain for their unlawful conduct to prevent future misuse of copyright law to defame and stifle the works of other authors.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over the federal claims pursuant to the Copyright Act (17 U.S.C. §§ 101 *et seq.*), 28 U.S.C. §§ 1331 and 1338 and the Declaratory Judgment Act (28 U.S.C. § 1367(a)) in that the state law claims form part of the same case or controversy as the federal claims.

6. Upon information and belief, Defendants, and each of them, have sufficient contacts with this judicial district generally and, in particular, with the events herein alleged, that each such Defendant is subject to the exercise of jurisdiction of this court over the person and such Defendant.

7. Upon information and belief, based on the national reach of Defendants, and each of them, a substantial part of the events giving rise to the claims herein alleged occurred in this judicial district.

PARTIES

8. Quill is a foreign, international corporation organized and existing under the laws of England with its principal place of business in London, England. Quill publishes works in print and electronic form. Quill's publications are sold internationally through Amazon and other online vendors, including Barnes and Noble, Apple iTunes, Rakuten-Kobo, Google Play, and Draft2Digital, as a distributor.

9. Ellis is an author residing in London, England. The name “Zoey Ellis” is a pseudonym used in the publication of her books. While Ellis writes across several literary genres, this litigation involves Ellis’s fictional romance series that is set against the backdrop of paranormal and epic fantasy drawing influences from an alternative universe (“AU”) known as “omegaverse.”

10. Blushing publishes works by various authors primarily in the romance, dark romance and domestic discipline genre. Blushing is a fictitious name for ABCD. Under Virginia law, an entity doing business using a fictitious name must file a certificate with the corporation commission. No certificate appears on the records of the commission. Blushing represents itself as being a registered trademark of Defendant ABCD [*See* Blushing Information, Ex. 1], according to application number 85897591. ABCD’s application was dismissed by the Trademark Office in early 2014 [*See* Trademark Dismissal, Ex. 2]. However, ABCD is a corporation organized under the State of Virginia with its principal place of business in Charlottesville, Virginia.

11. Cain is an author residing in Charlottesville, Virginia. The name “Addison Cain” is a pseudonym used in the publication of her books. Cain also writes across several literary genres. Cain classifies her series as “dark romance without the romance,” “gothic,” “horror,” “suspense-filled omegaverse” and “mystery suspense thrillers.” Cain’s books are set in a dystopian society and her stories borrow concepts from “omegaverse” fan fiction. Cain published a similar fan fiction story under the pseudonym of “Itzy Strange” in 2015.

12. The Does refer to anonymous participants and other actors acting in concert with Blushing and Cain to harm Plaintiffs’ reputation and, ultimately, end Quill’s

publications and Ellis's writing career. This does not, *in any way*, involve online book reviewers merely expressing their opinions about Plaintiffs' works as Ellis commonly solicits and encourages criticism and other feedback to hone her writing skills. Upon ascertaining the Does' identities, Plaintiffs will promptly obtain leave to name those individuals herein.

E-BOOK INDUSTRY AND "INDIE" WRITERS IN ROMANCE

13. Book publishing and distribution for years was dominated by the "Big 5" publishing houses *Macmillan*, *Hachette*, *HarperCollins*, *Penguin Random House Books* and *Simon & Schuster*. The advent of the Internet and development of small publishing houses and vanity presses have created new distribution opportunities for independent, or "indie" authors. Additionally, the availability of self-publishing software and related platforms gave "indie" authors the means to publish and profit from the delivery of their own works published in electronic format.

14. According to the *Romance Writers of America*, the estimated annual total sales value of the romance market in 2013 was approximately \$1.08 billion. In 2015, the romance novel share of the United States fiction market was roughly 34%.²

15. The surge of self- and small-press publishing has increased the number of self-publishing authors in the romance genre. To demonstrate, until methods used to choose best-sellers were changed by the *New York Times*, its e-book bestseller list from 2014 to

² Nielsen, *BookScan/PubTrack Digital*. 2015. Available <http://www.rwa.org>.

early 2017 was consistently dominated by “indie” authors, *i.e.*, independent authors who do not have a “Big Five” publisher and self-publish their books.

16. The opportunity created by self-publishing has changed the way romance readers buy books, their expectations about books, pricing and distribution, and the ways readers interact with authors. Author visibility, reputation, and credibility are critical to self-publishing success. An author’s social media presence on Facebook, Instagram, Twitter and other social media websites correlates directly with how well their books sell.

17. Many authors run Advance Reader Copy (“ARC”) programs. Such programs allow readers to get a free book in exchange for, hopefully, a good book review. Authors also use specialized public relations firms to help promote their books and obtain reviews. Selling books in the romance genre, especially for “indie” authors or authors with small publishing houses, has become extremely competitive. This market is generally self-regulated through industry standards, peer review, and compliance with the terms of service given by book vendors.

LITERARY GENRE

18. Omegaverse (or Alpha/Beta/Omega, A/B/O, or Alpha/Beta/Omega Dynamics, as its slightly broader category is called) is a collection of related tropes that tend to correlate in many stories. A/B/O defines stories in which humans are not only categorized by gender but also by a second dynamic, namely whether they present as alphas (dominant, physically large, quick-tempered, natural leader) or omegas (submissive, delicate, calm, peace maker), with an undetermined number of humans being default betas.

19. Omegaverse is considered a “perfect storm” of several popular fan fiction (and romance) tropes,³ including shifters (especially werewolves), soulmates, breeding and hypersexuality, empathic or telepathic bonds, and biologically deterministic hierarchical societies. As a term of folksonomy (rather than taxonomy), omegaverse is collectively created and used by fans, who are at liberty to include or exclude any aspect they like.

20. To be recognized as an omegaverse, at least some of a vast number of potential characteristics need to be present. These include:

- Imprinting (the mythology within omegaverses often assumes there are true alpha/omega mate pairings, a perfect match of eternal love, and the alpha often imprints on his mate)
- Scenting (pheromones are excessive for alphas and omegas often displaying their moods and affection)
- Omega Heat Cycles and Alpha Rut (The biologic necessity to procreate)
- Mate Bonding (a permanent bond between the partners, often because of imprinting and claiming bite)
- Claiming Bite (The alpha marks the omega during mating)
- Knotting (A physiological condition experienced by the alpha during mating to aid in impregnation.)
- Pregnancy (male and female)

21. Omegaverses share commonly used terms and ideas, such as nesting (the need to prepare a place for heat and conception), heat suppressants (often used to hide one’s

³ Kristina Busse. 2013. “Pon Farr, Mpreg, Bonds, and the Rise of the Omegaverse.” In Anne Jamison, ed., *Fic: Why Fanfiction is Taking over the World*, 293. Dallas, TX: BenBella.

omega status or simply to not have to experience heats), and omega sanctuaries (a place where omegas may experience their heat without the intrusion of alphas). Not every story must use all the characteristics. Two stories “tagged” online as A/B/O Dynamics may share little in common.

22. By most accounts, omegaverse was created as a specific sub-genre in 2010-2011 and acquired its name in late 2011. A/B/O started in an anonymous fan fiction community for the TV show *Supernatural*, and quickly grew popular enough to become an identifiable genre with its own recognizable tropes. Within two years, the sub-genre had spread to dozens of other fandoms. For example, on the multi-fandom collection, *Archive of Our Own*, by 2013 about 2,000 stories were tagged A/B/O. The sub-genre’s popularity grew exponentially; and, by 2018 more than 40,000 works had been tagged A/B/O.

23. Omegaverse statistics for *Archive of Our Own* in 2013 show that about 10% are labelled male/female. Additionally, a June 13, 2011 story is recognized as the first male/female story that followed clear omegaverse tropes and terminology.⁴ *Archive of Our Own* hosts several longer omegaverse stories about alpha males and omega female written

⁴ Tebtosca. 2012. “Just Keep Breathing With Me.” *Livejournal*. Available <https://tebtosca.livejournal.com/20794.html>.

in 2012,⁵ including novel-length stories from 2014.⁶ In 2014, mainstream feminist blogging site *Jezebel* features an article explaining omegaverse to its readers.⁷

24. The quick dissemination of omegaverse across most popular fan fiction fandoms helped spread the popularity of omegaverse to male/male commercial romances (often written by fan fiction authors). Meanwhile, some established male/female commercial romance also grew in popularity in the 2000s, including that of the shifter (often werewolves, such as Patricia Briggs' ALPHA AND OMEGA Series [2007–15]) and that of the hypermasculine alpha hero, which romance writer Doreen Owens Malek describes as a “strong, dominant, aggressive male brought to the point of surrender by a woman.”⁸

⁵ Tristesses. 2012. “All Reason Aside, I Just Can't Deny.” *Archive of Our Own*. <https://archiveofourown.org/works/583600>. Hotchoco195. 2013. “Strangers and Soulmates.” *Archive of Our Own*. Available <https://archiveofourown.org/works/605274>.

⁶ Rector. 2014. The Encounter Series. *Archive of Our Own*. Available <https://archiveofourown.org/series/106793>. KristinStone. 2015–. Living and Breathing in Flint Series. *Archive of Our Own*.

⁷ Mark Shrayber. “‘Knotting’ Is the Weird Fanfic Sex Trend That Cannot Be Unseen.” *Jezebel*. June 18. Available at <https://jezebel.com/knotting-is-the-weird-fanfic-sex-trend-that-cannot-be-u-1606931767>.

⁸ Doreen Owens Malek. 1992. “Mad, Bad, and Dangerous to Know: The Hero as Challenge.” In Jayne Ann Krentz, ed. *Dangerous Men and Adventurous Women: Romance Writers on the Appeal of the Romance*. University of Pennsylvania Press. 74.

ELLIS'S MYTH OF OMEGA VS. CAIN'S ALPHA'S CLAIM

25. Both stories contain similarities that are already determined by their various genre categories. The similarities found between the two stories lie exclusively within their use of the A/B/O's recognized tropes.

26. As fantasy novels, both novels are expected to feature elements beyond our contemporary worlds, though the setting of the two series is quite different. As omegaverses, the societies of MYTH OF OMEGA and ALPHA'S CLAIM are both structured as hierarchical cultures, in which omegas are rare and segregated (justified as protection). This is a common setup for omegaverses, which authors often use to explore intrinsic gender imbalances.⁹

27. The fantasy world in ALPHA'S CLAIM follows the trope of a futuristic dystopia, in which the society lives in domes on an unspecified Earth after a cataclysmic event and, in addition, deals with the aftermath of a biological plague. The novel is set in one of the domes shortly after the successful prisoner revolution spearheaded by the main alpha protagonist. Omegas are common in this world, but the recent social upheavals have created chaos ripe for abuse that manifests itself through the exploitation of weaker beings.

28. MYTH OF OMEGA is set in an undetermined fantasy setting inhabited by warring aristocratic factions. Omegas are a myth in this world and haven't been seen by the public in more than a century. After having conquered large parts of the known world,

⁹ Elliot Aaron Director. 2017. "Something Queer in his Make-Up: Genderbending, Omegaverses, and Fandom's Discontents." Ph.D. Thesis, Bowling Green State University. Marianne Gunderson. 2017. "Rewriting sex and gender in omegaverse fanfiction." M.A. Thesis, University of Oslo, Blindern, Norway.

the alpha—the main protagonist—is looking to solve the omega mystery. Magic is known in the world as “talent” but is feared and forbidden by the alpha hero.

29. While both series employ the enemies-to-lovers trope and, likewise, feature an omegaverse-type pairing, the ending to ALPHA’S CLAIM is akin to the tragedy of Shakespeare’s *Romeo and Juliet* where the lovers commit suicide. In contrast, MYTH OF OMEGA uses the enemies-to-lovers trope consistent with a more traditional romance and comparable to the relationship of Ike Graham (Richard Gere) and Maggie Carpenter (Julia Roberts) in *Runaway Bride* where the story has a happy ending. More simply, using a common trope does not make the stories the same, *i.e.*, *Sleeping Beauty* and *Snow White* are different fairytales with separate, distinct plots.

30. Consistent with the AU in omegaverse fan fiction, both series write of an alpha male anti-hero commanding a group of alpha warriors, *e.g.*, ruling over a dystopian futurist rebellion of prisoners in ALPHA’S CLAIM and an expansionist quasi-medieval society in MYTH OF OMEGA.

31. In both series, the omega women use suppressants/blocks to hide their pheromones. In ALPHA’S CLAIM the omega uses chemicals and dresses in smelly clothes to approach the alpha male to ask him for food for her fellow omegas in hiding after the rebellion. In MYTH OF OMEGA the omega blocks sensory responses by magic to access the library that houses information on the disappearance of omegas for the past century. These precautions fail as they often do in omegaverse stories to get the plot going, and the alpha protagonists scent the veiled omegas, and realize they are in heat and remove them from the other alphas. In ALPHA’S CLAIM the hero must fight and kill several competitors

whereas in MYTH OF OMEGA the status of the alpha hero allows him to segregate her from the rest of the castle.

32. In both series, the alphas eventually claim the omegas by force and knot them; in both stories, omegas fight both the alphas and their own biological desires; in both stories, the omegas nest and the alphas purr—all consistent with A/B/O tropes. These tropes often and repeatedly occur in omegaverse stories; yet, the timelines in the stories are quite different as are the specific encounters. Whereas the biological imperatives attributed to both alphas and omegas are common for omegaverse fiction, it is the specific implementations that distinguishes one story from another.

33. In ALPHA’S CLAIM, the first, quite violent encounter occurs within the first chapter, followed by a prolonged imprisonment of the omega during which she nests. The alpha claims the omega by biting her and establishing the bond forcibly. Thereafter, the omega describes repeatedly the psychological pull of that bond. In contrast, MYTH OF OMEGA follows more traditional romance tropes by letting the central pair spar verbally for several chapters. Once the omega’s blocks fail and the alpha removes her, she creates a magical barrier and waits out her heat. Only toward the end of her heat (called “haze” in the series) do the barriers fail and the alpha claims and knots her. While MYTH OF OMEGA’s central alpha/omega pairing will eventually bond and procreate, it is a decision that is much delayed.

34. Both alphas are exceptionally possessive of their omegas and hostile to other alphas, which is a common feature in omegaverse fiction. Both are morally ambiguous as heroes, and only slowly are revealed as more emotionally appealing characters to readers

and the heroines. In ALPHA'S CLAIM a lot of the alpha's behavior is explained by his past. In contrast, MYTH OF OMEGA's alpha hero is mostly conflicted by the competing drives of his warrior and his alpha instincts that he does not understand. Unlike ALPHA'S CLAIM, MYTH OF OMEGA switches points of view every chapter, so that the reader is more aware of the alpha's feelings and reasoning. ALPHA'S CLAIM, on the other hand, places the reader at first fully in the position of the omega female, trying to decipher the alpha's actions.

35. A more important distinction between the two stories is the dynamic between the central pairing. While both couples start out hostile and eventually give in emotionally to their biological connection, ALPHA'S CLAIM has a much steadier development toward that goal with both characters slowly and repeatedly reconsidering their positions. MYTH OF OMEGA's central characters, on the other hand, truly hate one another for the majority of the novels as their political struggles often have to take precedence over their relationship. Likewise, the emotional obstacles function differently in both series with ALPHA'S CLAIM's complication of the alpha's original love who continues to reject the pair's potential love.

36. Both series feature one central pairing, so it can be expected that there are several obstacles before the alphas and omegas bond and admit their love for one another. While most novels require some form of complication to develop a plot, not all romance fiction finds that complication within the love story itself. The obstacle could be external (shipwreck, going bankrupt, war, etc.) with the central love pairing between strangers or friends. However, the enemy-to-lovers trope is one of the more popular in romance fiction, allowing for an internal narrative thrust in which both need to overcome their resentments

and discover their similarities and love for one another—whether Beatrice & Benedick in Shakespeare’s *Much Ado About Nothing*, Elizabeth Bennett & Mr. Darcy in *Pride and Prejudice*, Scarlett O’Hara & Rhett Butler in *Gone with the Wind*.

37. Both series clearly share a dynamic in which the central pairing begins with a contentious if not hostile relationship. Moreover, the dark romance trope already posits the main male character as a powerful anti-hero or outlaw with a moral compass, which the heroine will ultimately recognize, and which will lead to her accepting her feelings for him. ALPHA’S CLAIM and MYTH OF OMEGA share a variety of scenarios that are common in omegaverse stories. Given that emotional attachment and physical attraction are often not in sync, many scenes in omegaverse fiction will explore the omega (but sometimes also the alpha) battling nature versus nurture, mind versus body. Ultimately, however, the biological imperative of mating and bonding will win out, a central aspect of the omegaverse trope.

38. Beyond that internal obstacle of trying to come to terms with their destiny, or pairing, there are external obstacles in the post-revolution society of ALPHA’S CLAIM and the warring kingdoms of MYTH OF OMEGA. Consistent with the genre, these battles, injuries, misunderstandings, escapes, and kidnappings ultimately serve to impede the true goal of the novels—namely, the acceptance by both mates that they are destined to be together and the eventual acceptance of their pairing.

39. Several typical omegaverse plot points occur in both series, but the different setting and the different pacing makes the two novels distinct reading experiences. More importantly, the plot with respect to the alpha/omega reconciliation plays out differently.

For example, in ALPHA'S CLAIM the omega fights a lonely battle against the alpha's army. The series ends with the alpha in a standoff with the government he had initially overthrown. MYTH OF OMEGA's central plot has the alpha fighting against another kingdom, and then against a long-term omega conspiracy that has deceived everyone to protect omegas. The series ends happily with the alpha and omega about to become parents while overseeing their kingdom.

40. Cain's series puts a strong emphasis on non-consensuality and power exchange, which tilts the overall tone: sexual encounters (often non-consensual) are extensive, violent, and frequent in ALPHA'S CLAIM. The non-consensual sexual encounters are not always tempered by the alpha's regret as in MYTH OF OMEGA, where the point-of-view shifts to allow us to see the assailant's immediate regret. The role of the bond is different as well: where ALPHA'S CLAIM focuses greatly on the animalistic and physical nature of the bond (such as the omega feeling the alpha in her mind after he bonds her against her will), MYTH OF OMEGA uses an interpretation of the soul bond that balances physicality with emotion and must be bilateral to function properly. There is also less focus on monogamous exclusivity in ALPHA'S CLAIM, where the alpha male has sex with another woman in front of his omega. Finally, ALPHA'S CLAIM focuses heavily on its dark genre aspects: the omega is violently raped resulting in the loss of her child near the end of the series and a potential re-unification of the alpha and omega, both believed dead, is delayed beyond the third book.

FACTUAL ALLEGATIONS

41. On January 18, 2018, Ellis released *Crave to Conquer*, the first book in her omegaverse series entitled MYTH OF OMEGA. This book chronicles the dark-edged epic fantasy romance between a female heroine (omega) and a male anti-hero (alpha). On March 20, 2018, Ellis released *Crave to Capture*, the second book in her series. It is a continuation of the first book and follows the alpha and omega's journey. The third book, *Crave to Capture*, was published on May 23, 2018, concluding the series consistent with the character of a romance where the main couple lives happily ever after.

42. Each book in Ellis's MYTH OF OMEGA series was registered pursuant to the Copyright Act of 1976, the Designs and Patents Act of 1988, and subject to the protection of the Berne Convention for the Protection of Literary and Artistic Works.

43. Ellis's MYTH OF OMEGA series was released through Draft2Digital, Amazon, Barnes and Noble, iTunes Apple, Rakuten-Kobo and Google Play. These online vendors sell e-books and print books to customers.

44. After the release of Ellis's first two books, *Crave to Conquer* and *Crave to Capture*, Blushing and Cain directed a "take-down" notice to Draft2Digital and other vendors on or about April 19, 2018. Blushing and Cain asserted Ellis's series infringed on Cain's copyrights and demanded Draft2Digital remove Ellis's books from sale. [See "Take-Down" Notice dated April 19, 2018, Ex. 3].

45. The "take-down" notice represented Cain possessed validly registered copyrights. While Cain applied for a copyright for her first book, it was not done until two

years following the book's publication. The remaining books in Cain's series remain unregistered.

46. Around the same time of their initial "take-down" notice, Defendants also sent additional "take-down" notices to Barnes and Nobles, iTunes Apple, Rakuten-Kobo and Amazon. [See Additional "Take-Down" Notices, Ex. 4]

47. Thereafter, from April 24, 2018, to May 16, 2018, Plaintiffs received multiple reader inquiries stating Plaintiffs' books were missing from online vendors. Through these communications, Plaintiffs learned of Defendants continuing efforts to disrupt Plaintiffs' book sales.

48. On May 16, 2018, Draft2Digital's representatives advised Plaintiffs that Draft2Digital and Barnes and Noble had removed MYTH OF OMEGA from sale because of the "take-down" notices.

49. During the week of May 16, 2018, Plaintiffs received communications from the vendors that "take-down" notices were now filed against all three books, including *Crave to Claim* which had not been published at the time the "take-down" notices were filed.

50. Further communications with vendors revealed that all three books of the MYTH OF OMEGA series were removed from sale. [See Vendor Communications, Ex. 5]. iTunes even removed Ellis's entire library of works solely based on Blushing and Cain's false claims.

51. Blushing and Cain's "take-down" notices—while only referencing Ellis' first book, *Crave to Conquer*—made allegations against the entire MYTH OF OMEGA series

without identifying how book two, *Crave to Capture*, was infringement and, more incredibly, asserted infringement by book three, *Crave to Claim*, falsely claiming it had been reviewed. *Crave to Claim* was not even in publication at the time of Blushing and Cain's notices.

52. Blushing and Cain filed numerous "take-down" notices—at a minimum twelve (12) but up to fifteen (15) or more—in their effort to cause leading vendors to remove the entire MYTH OF OMEGA series from sale.

53. Upon learning of the "take-down" notices, Plaintiffs promptly delivered counter-notices under Section 512(g) of the Copyright Act ("Counter-Notices"). [See Counter-Notices dated May 14 & 16, 2018, Ex. 6].

54. The Counter-Notices prompted vendors to restore all of Ellis's works; however, the restoration process in some instances took months.

55. Plaintiffs showed in the Counter-Notices that Blushing and Cain made material, false representations. [See Draft2Digital Correspondence, Ex. 7].

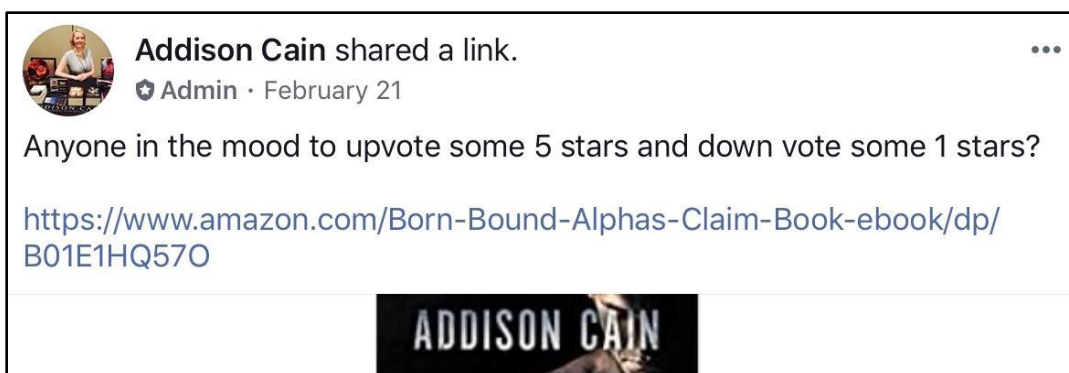
56. Blushing and Cain's "take-down" notices violated the Copyright Act, damaged Ellis's reputation and resulted in financial losses, including, but not limited to, pre-release and ordinary book sales in the United States and internationally.

57. Following Blushing and Cain's notices to Draft2Digital and other vendors, Ellis has been subjected to online harassment and defamation, including false and malicious claims of plagiarism. The forums in which the harassment and defamation occurred are both public and private online forums, which are all well-known within the dark romance fan communities.

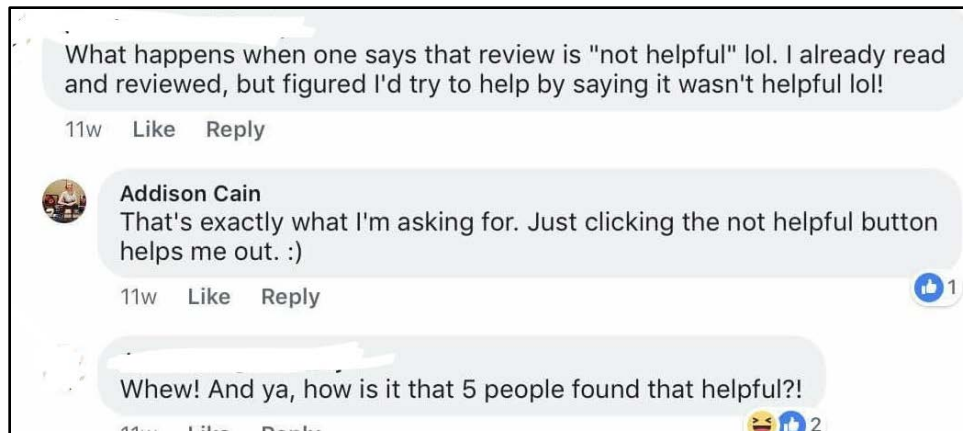
58. Blushing and Cain—consistent with their long-standing practices of manipulating commentary on their own publications in violation of industry guidelines—used the same technique to solicit negative reviews of Ellis’s works. [*Compare* Cain Review Manipulation, Ex. 8 *with* Cain’s Online Posts targeting Ellis, Ex. 9; *see also* Amazon Guidelines, Ex. 10].

59. Those participating and associated with Blushing and Cain also made baseless claims that Ellis copied Cain’s writings and shamed Ellis with accusations of plagiarism. [*See* Disparaging Posts, Ex. 11]. Such commentary had the intended effect of harming Ellis’s reputation as an author, driving away potential readers interested in Ellis’s works, and causing Plaintiffs financial loss and hardship.

60. Consistent with these efforts and as part of concerted efforts to monopolize the market, Cain has often used social media to manipulate and change ratings on her own books in derogation of vendor guidelines (see example below). Such guidelines direct that consumers, authors, and/or publishers “*should not offer any other incentive for a Customer Review*” as it would be deemed improper compensation. Further, vendor guidelines provide that authors should not “*attempt to drown out other people’s opinions*”. [*Compare* Amazon Guidelines, Ex. 8, with Review Manipulation Posts, Ex. 12].



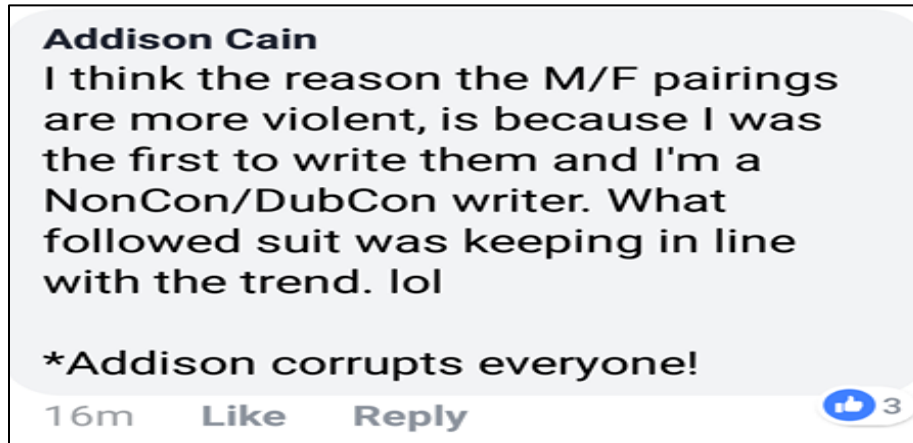
61. Cain also prompts the manipulation of reviews by encouraging readers to down vote other readers and drown those reader's opinions (see example below). All of this in derogation of vendor guidelines and demonstrates Cain's efforts to manipulate and monopolize. Blushing and Cain's practices subverts practices designed to ensure "honest reviews." This pattern and practice is deliberate and designed to harm competitors.



62. After attempts to remove Ellis's works failed after the Counter-Notices were filed and the books were reinstated, Cain continued a campaign to defame Plaintiffs with accusations of plagiarism.

63. In further attempts to harm Plaintiffs, Cain claims on social media that anyone who writes in the male/female omegaverse is copying her and asserts ownership of the genre stating "she was the one who created the male/female genre" (see example below). Cain makes these untenable claims despite another author having already published a book, which was sold on Amazon in 2014, that is recognized as one of the first,

published omegaverse fan fictions.¹⁰ Moreover, there are thousands of stories in omegaverse fan fictions that depict male/female pairings. [See Kristina Busse, Ph. D. Analysis, Ex. 13].



64. Blushing published another omegaverse series by an author named Carolyn Faulkner called the ALPHA’S WOMAN Series (*The Alpha’s Woman* (July 12, 2017), *Kosh’s Omega* (Alpha’s Woman Book 2) (Nov. 1, 2017), *Red’s Mate* (Alpha’s Woman Book 3) (July 4, 2018)). The same allegations of alphas being big, omegas being rare, omegas fighting their heat, dystopian society, omegas hiding from the alphas and trying to escape are all in these later published books, even though they accuse Plaintiffs of infringement.

65. Throughout the filing of the “take-down” notices and counter-notices, Blushing continued to harass Ellis through emails to intimidate, embarrass, and harm Ellis. [See Blushing Emails, Ex. 14].

¹⁰ Nora Ash. Taken by Darkness. 2014. Available https://www.goodreads.com/book/show/22828176-taken-by-darkness?from_search=true.

COUNT I – MISUSE OF COPYRIGHT
(Against Blushing and Cain)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

66. Ellis’s MYTH OF OMEGA series is an original work of authorship, not infringement. [See Cease and Desist Letter, Ex. 15].

67. Ellis’s work was independently created and employed a degree of creativity consistent with other “fan fictions” written in omegaverse fiction.

68. Ellis’s MYTH OF OMEGA series is a dark-edged romance that draws upon established omegaverse tropes and immerses the reader in a stirring tale of a yearning erotic desire amidst a heroine’s epic journey. However, Cain’s dark erotic suspense thriller, while also drawing upon omegaverse tropes, is a story of brutal rape, murder, and death—a horrific tragedy of loss.

69. And, though there is no single, accepted set of rules for stories written in the omegaverse genre, such stories usually include strong themes of dominance and submission, and possessiveness. Most stories focus on alphas bonding and mating with omegas, and there is a strong use of the “soul mate” trope as well as the concept of sex (or mating) as a biological imperative. As demonstrated above, some stories build alternate societal and cultural traditions, while others insert omegaverse conventions into an otherwise “real world” or canonical story.

70. Ellis’s MYTH OF OMEGA and Cain’s ALPHA’S CLAIM both assimilate dominant omegaverse tropes.

71. Blushing and Cain’s motivation, however, in demanding the removal of Ellis’s MYTH OF OMEGA series was not to protect any copyright, but instead was intended to stifle competition.

72. Blushing and Cain have engaged in similar acts with other authors writing omegaverse fan fiction. [See Cain’s Dragon Maiden Post, Ex. 16].

73. In this instance, Blushing and Cain used false copyright claims in their “take-down” notice because the “safe harbor” provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512, provides a mechanism by which it could demand expeditious takedown of materials alleged to infringe copyright.

74. Blushing and Cain never intended to pursue litigation in good faith because the only similarities between Ellis’s MYTH OF OMEGA and Cain’s ALPHA’S CLAIM were the persistent and dominant tropes found in all omegaverse fan fiction.

75. Cain’s assertion of ownership with respect to the male/female omegaverse sub-genre and false claim of authoring the first male/female story arc are unfounded, claims. Such deceit can only be maintained by willfully and purposefully ignoring catalogued omegaverse fan fiction publications beginning in 2010 that predate Cain’s 2016 series.

COUNT II – MISREPRESENTATION, 17 U.S.C. § 512(f)
(Against Blushing and Cain)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

76. Blushing and Cain knowingly and materially misrepresented to Draft2Digital, Amazon, Barnes and Noble, iTunes-Apple and Rakuten-Kobo and other parties that Ellis's MYTH OF OMEGA series infringes upon Cain's copyright.

77. Blushing and Cain knowingly and inaccurately represented the standard to vendors that "ideas" "plots" and "arcs" are copyrightable.

78. Out of the thirty-one supposed similarities, Blushing and Cain misrepresented eight of them as copyrightable, without noting that they are tropes of omegaverse, in no way novel or unique to Cain's work, and thus not subject to copyright protection. In particular, Defendants misleadingly alleged that they hold copyright on the concepts of (a) alphas being big, (b) suppressants being used by omegas to hide their dynamics, (c) protagonist couple be an alpha male and an omega female, (d) the use of suppressants to hide the dynamic of the omega, (e) that in a dark romance the main character is an anti-hero, (f) that the omega fights and wants to escape the relationship, (g) that the omega is unhappy, and (f) that biology predetermines the finding of mates (most shifter romance works include this). These are concepts that cannot be copyrighted.

79. Ten of the allegations of why Cain's work was copyrightable were presented in a misleading way that ignores the context, logic, and circumstances of the books.

80. Twelve of the allegations were outright false statements made about the story of *Crave to Conquer* to make it seem like Ellis had copied text from Cain. These allegations are not only incorrect, but purposefully inaccurate. And, much of the information provided by Blushing and Cain about its own work was presented incorrectly and/or out of context to make it similar to *Crave to Conquer* for the purposes of the "take-down" notices. A side-

by-side comparison demonstrates that Blushing and Cain liberally misquote their own work.

81. Blushing and Cain represented that they had conducted an independent review of a book that had not been published (established law required that for copyright violation to occur there must be “text” or “work” that infringes the copyrighted work). Blushing and Cain still represented that Plaintiffs’ third book *Crave to Claim* in which the two main characters mate, have an infant daughter, rule their world together and live happily ever after violated the copyrighted text of Cain’s third book in which the heroine gets raped as orchestrated by the ex-lover of the anti-hero (with who the anti-hero had cheated with), she loses her baby and is left for dead, the anti-hero is presumed to be dead, and at the end of the book it is unclear whether or not both main characters are alive.

82. Blushing and Cain made all of these allegations under penalty of perjury and represented they had satisfied the requirements under the Copyright Act and that they were filing “take-down” notices in good faith.

83. Blushing and Cain’s actions have caused Plaintiffs injuries as set forth above and they are entitled to all relief afforded by law.

COUNT III – NEGLIGENCE
(Against Blushing and Cain)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

84. Blushing and Cain had a duty to Plaintiffs to exercise good faith and due diligence in submitting any “take-down” notice with respect to Ellis’s works.

85. Blushing and Cain breached its duty to Plaintiffs.

86. Because of Blushing and Cain's breach, Plaintiffs suffered financial losses and harm to reputation.

87. Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

88. Blushing and Cain had a duty to exercise good faith and due diligence in evaluating filing a "take-down" notice under the statute.

89. Blushing and Cain breached their duties under the Copyright statute by filing a "take-down" notice, under penalty of perjury, in which they represented they had reviewed a book that was not yet published, and no copies were available to anyone.

90. Because of Cain's and Blushing's breach, Plaintiffs suffered financial losses by losing pre-order and pre-sales and harm to their reputation.

COUNT IV - TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE
(Against Blushing and Cain)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

91. Plaintiffs had prospective business relations and expectancies involving the sale of the MYTH OF OMEGA series as distributed through the vendors.

92. Blushing and Cain had knowledge of Plaintiffs' prospective business relations and expectancies.

93. Blushing and Cain intentionally interfered with Plaintiffs' prospective business relations and expectancies causing a breach and termination of those relationships and expectancies.

94. Blushing and Cain's interference caused Plaintiffs to suffer economic losses and other damages as set forth herein.

95. Plaintiffs are entitled to all relief afforded by law resulting from Blushing and Cain's wrongful and intentional interference with their prospective business relations and expectancies.

COUNT V – MALICIOUS INTERFERENCE WITH CONTRACT
OR BUSINESS RELATIONS
(Against Blushing and Cain)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

96. Plaintiffs had existing business relations involving the sale of the MYTH OF OMEGA series as distributed through the vendors.

97. Blushing and Cain intentionally interfered with Plaintiffs' existing business relations causing a breach and termination of those relationships.

98. Blushing and Cain's interference was malicious, wrongful, and neither justified, privileged, nor excusable.

99. Blushing and Cain's interference proximately caused Plaintiffs to suffer economic losses and other damages.

100. Plaintiffs are entitled to all relief afforded by law resulting from Blushing and Cain's malicious and wrongful interference with Plaintiffs' existing business relations.

COUNT VI – DEFAMATION
(Against Blushing, Cain, and Does)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

101. Blushing, Cain, and the Does made false and defamatory statements concerning Plaintiffs.

102. Blushing, Cain, and the Does anonymously conspired and colluded to publish and communicate these false and defamatory statements concerning Plaintiffs to third parties without privilege or authorization, including accusations Ellis is engaging in harassment, and are presently maintaining and continuing their tortious activities.

103. Blushing, Cain, and the Does anonymously created and/or contributed to multiple online forums that published and communicated these false and defamatory statements concerning Plaintiffs. Such forums continue in operation.

104. Blushing, Cain, and the Does published the false and defamatory statements concerning Plaintiffs with actual malice, with knowledge of the statements' falsity, and/or with reckless and negligent disregard for the falsity of the statements.

COUNT VII – FALSE LIGHT
(Against Cain, Blushing, and Does)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

105. Blushing, Cain, and the Does broadcast to the public in general and/or to a large number of people information that would be highly objectionable to a reasonable

person by attributing to Plaintiffs false characteristics, conduct, and/or beliefs that place Ellis in a highly offensive and false light and position.

106. Blushing, Cain, and the Does placed Plaintiffs in a false light even though they knew of and/or acted in reckless disregard of the falsity of the publicized information.

107. Plaintiffs have incurred damages and other harm as a result of Blushing, Cain, and the Does's tortious conduct.

COUNT VIII – CIVIL CONSPIRACY
(Against Cain, Blushing, and Does)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

108. Blushing, Cain, and the Does form a confederation of two or more people or entities.

109. On information and belief, Blushing, Cain, and the Does together facilitated and furthered, and continue to facilitate and further, the misuse of copyright to stifle competition and harm Plaintiffs financially.

110. On information and belief, Blushing, Cain, and the Does together facilitated and furthered, and continue to facilitate and further, the posting of defamatory statements online about Plaintiffs and have and continue to cause Plaintiffs to be cast in a false light to stifle competition and harm Plaintiffs financially.

111. Blushing, Cain, and the Does's misconduct and unlawful activities caused, and continue to cause, Plaintiffs actual harm for which they are entitled to recover damages.

COUNT IX – DECLARATORY JUDGMENT
(Against Blushing, Cain, and Does)

Plaintiffs adopt and re-allege each and every paragraph and title above as if set forth verbatim herein.

112. A real and actual controversy exists between Plaintiffs and Blushing and Cain regarding whether Ellis’s MYTH OF OMEGA series infringes upon any copyrights claimed by Cain.

113. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure to determine and adjudicate questions of actual controversy between parties.

114. Plaintiffs contend as it relates to Blushing and Cain, consistent with the Copyright Act, judicial decisions construing such laws, doctrines, and provisions, publication of Ellis’s MYTH OF OMEGA series is lawful.

115. Blushing and Cain contend the contrary of the above-stated proposition.

116. Plaintiffs request that the court determine and adjudge that each and every of the above-stated propositions states the law applicable to the facts involved in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Quill Ink Books Limited and Zoey Ellis, pray for the following relief:

1. A declaratory judgment that publication of Ellis’s MYTH OF OMEGA series is lawful;

2. Injunctive relief restraining Blushing and Cain, their agents, servants, employees, successors and assigns, and all others in concert and privity with them, from bringing any lawsuit or threat against Plaintiffs or any other person or entity or copyright infringement relating to publication of Ellis's MYTH OF OMEGA series;

3. Damages from copyright misuse, misrepresentation, negligence, tortious interference with existing and prospective business relations, defamation, false light, and civil conspiracy;

4. Punitive damages as allowable by law;

5. Attorney's fees pursuant to 17 U.S.C. § 512(f), other portions of the COPYRIGHT ACT, or as otherwise allowed by law;

6. Plaintiffs' recoverable costs; and

7. Any further relief as the Court deems just and equitable.

Respectfully submitted,

s/ Gideon A. Lincecum

Gideon A. Lincecum, OBA No. 19674

Dylan D. Erwin, OBA No. 31987

HOLLADAY & CHILTON, PLLC

204 North Robinson, Suite 1550

Oklahoma City, OK 73102

Telephone: (405) 236-2343

Facsimile: (405) 236-2349

Email: glincecum@holladaychilton.com

derwin@holladaychilton.com

**ATTORNEYS FOR PLAINTIFFS
QUILL INK BOOKS LIMITED AND
ZOEY ELLIS**